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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P.No.5576 of 2007

Date of decision: 20.4.2007

Goel Die Cast Limited, Village Sankhol, Delhi Rohtak Road,

Bahadurgarh, Haryana ...

Petitioner

Versus

Commissioner Income Tax (Appeals), Rohtak and another

...Respondents

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Pankaj Jain, Advocate for the petitioner.

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RAJESH BINDAL, J.

By filing the present petition under Articles 226/227 of the Constitution of India, the petitioner has prayed for quashing notice dated April 3, 2007 issued by the Commissioner of Income Tax (Appeals), Rohtak to the assessee, inter-alia, proposing the enhancement of the income assessed by the Assessing Officer in exercise of powers conferred under Section 251 of the Income Tax Act, 1961 (for short 'the Act').

We have heard learned counsel for the petitioner and with his assistance perused the documents on record.

The assessee filed his return of income for the assessment year 2004-05 on May 31, 2004 declaring his income at Rs. 30,856/-, which was processed under Section 143(1) of the Act on December 21, 2004. Lateron, the case of the petitioner was taken up for scrutiny and notice under Section

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143(2) of the Act was issued to the assessee, who is engaged in the business of manufacture of PVC rings. On perusal of the balance sheet of the company as on March 31, 2004, it was revealed that share capital of the company as on March 31, 2003 was Rs. 1,02,21,800/-, which was increased to Rs. 3,84,21,800/- as on March 31, 2004. Out of Rs. 2,82,00,000/- received on account of share application money, an amount of Rs. 1,15,00,000/- was shown to have been received during the financial year 2002-03 (assessment year 2003-04) and the remaining amount of Rs. 1,67,00,000/- was shown to have been received during the financial year 2003-04 (relevant to current assessment year). During the course of assessment proceedings, assessee was required to prove the identity and creditworthiness of the share holders and the genuineness of the transactions. After holding enquiries and considering the entire evidence on record, the Assessing Officer came to the conclusion that transactions were not genuine. It was held that the amount was nothing else but concealed income of the assessee given cloak of share application money. Accordingly, the income was assessed at Rs. 1,38,30,856/- as against Rs. 30,856/- declared by the assessee.

Aggrieved against the order of assessment, the assessee preferred an appeal before the Commissioner of Income-Tax (Appeals) (for short 'the CIT(A)'). During the course of hearing, the CIT(A), while referring to the contention raised by the petitioner, about the violation of principles of natural justice by the assessing officer, in not confronting the material collected at the back of the assessee, also issued notice for enhancement of income on the basis of information received from assessing officer. It was for the reason that entire transactions of share application money, as noticed in the order of assessment, had not been verified by the assessing officer.

The contention of the learned counsel for the petitioner is that action on the part of the CIT(A) in relying upon the report sent by the assessing officer and to form the same as basis for enhancement of income is totally without jurisdiction. According to him in terms of Section 251 of the Act, it is the Commissioner of Income Tax only who could suo moto exercise this power without there being any extraneous information. The

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provisions of Section 251 of the Act are extracted below:-

"**251. Powers of the Commissioner (Appeals)**

(1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers-

(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;

(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;

(c) in any other case, he may pass such orders in the appeal as he thinks fit.

(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation:- In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the [Commissioner (Appeals)] by the appellant."

A perusal of the above extracted provisions of Section 251 of the Act, which defines powers of the Commissioner (Appeals), it is evident that Appellate Authority has been given powers to confirm, reduce, enhance or annul assessment. The only pre-condition mentioned for exercising the powers to enhance the income is that the same could be done only after providing adequate opportunity of hearing to the assessee. There is no restriction under the Act that the information, which could form basis for enhancement of income, could not be sourced from the assessing officer. The enough safeguard for exercising of such powers in the form of principle of natural justice has been provided.

An identical issue was considered by a Division Bench of Kerala High Court in **Popular Automobiles Vs. Commissioner of**

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Income-Tax (1991) 187 ITR 86 wherein it was held as under:-

> "It was contended before us that it is open to the Commissioner of Income-tax (Appeals) to enhance the assessment suo motu. The question that was mooted was that the Commissioner of Income-tax (Appeals) was not obliged to do so, on a motion made by the Income-tax Officer in that regard. In other words, it was argued that the power vested in the Commissioner of Income -tax(Appeals), even to enhance an assessment , is a suo motu discretionary power and the Income-tax Officer has no right to demand the exercise of that power in any particular case. We see no force in this plea. In Knight v. IRC (1974) 49 TC 179 (CA) at page 212, Stamp L.J.said:
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> > "The other fact which it was submitted led to the conclusion that the determination of the General Commissioners was a nullity was the fact that the Inspector of Taxes invited the General Commissioners to increase the four estimated assessments, not merely to the figure which had been agreed, but in the case of two of the years of assessment in question by treating the money in the mother's account as derived from the appellant's trade, and adduced evidence in support of the submission that they ought to be so treated. This submission is based on the provisions of section 52(2) of the Income Tax Act, 1952, which it is urged impliedly precludes evidence in support of an increased assessment being produced by the Inspector of Taxes: and see the observations of Lord Diplock in In re Vandervell's Trusts (1970) 46 TC 341, at p.372; (1971) AC 912, at page 942 (HL). It would be anomalous if the General Commissioners, having power under Section 52(6) to make an increased assessment, had no power to admit or invite evidence adduced on behalf of the Crown, who alone would have an interest to adduce it, designed to

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> enable the General Commissioners to exercise the power which Parliament has conferred upon them. It would also be anomalous if the Crown, adducing evidence in support of an existing assessment, was precluded by the effect of section 52(2) from adducing evidence of the taxpayer's true income because it would thereby be adducing evidence leading to an increased assessment."

Similarly, in Way v. Underdown (H.M. Inspector of Taxes) (1974) 49 TC 215, 231 (CA), in disposing of a petition similar to the one raised herein, Plowman J. stated as follows:

> "Even if it is right that the Inspector can only give reasons in support of the assessment and is not entitled to argue that it should be increased, the Commissioners undoubtedly have power under Section 52(6) to increase assessments, and it may be that the Inspector in the present case was doing no more than reminding the Commissioners what their jurisdiction was."

In the light of the above decisions, we hold that it is open to the Income-tax Officer to bring to the notice of the Commissioner of Income-tax (Appeals) any lapse or omission or error in the assessment and invite the appellate authority to exercise the power vested in him to enhance the assessment or take other steps to undo the harm or error. It is idle to contend that though the Commissioner of Income-tax (Appeals) can exercise the power to enhance the assessment even suo motu, such a power cannot be exercised when the occasion for the exercise of such power is on an alert made by the Income-tax Officer or brought to his notice by the Income-tax Officer (assessing authority). The Income-tax Officer cannot prefer an appeal against his own assessment. It may be that it is open to him either to rectify the order under Section 154 of the Act or initiate proceedings for reassessment, if it is justified in law, or request the Commissioner of Income-tax to exercise his suo

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motu power of revision under Section 263 of the Income-tax Act. It is also open to the Income-tax officer to point out the error or omission and request the Commissioner of Income-tax (Appeals), before whom the appeal filed by the assessee is pending, to take reasonable steps to see that a true and proper assessment is rendered in the case. The powers aforesaid are concurrent. We hold that the Income-tax Officer had locus standi or right to alert the Commissioner of Income -tax (Appeals) and bring to his notice that section 37(3A) of the Act is applicable in the instant case and that an enhancement in disallowance is called for on that account".

Keeping in view the plain language of Section 251 of the Act and the interpretation given to it by Kerala High Court in Popular Automobiles' case (supra), we are of the view that power to enhance income can be exercised by the CIT(A) even on an information furnished by the assessing officer.

For the reasons recorded above, we do not find any merit in the petition and accordingly dismiss the same.

(Rajesh Bindal)
Judge

April 20 , 2007 **(M.M.Kumar)**
Pka **Judge**